

It violates due process to try or convict a person who is mentally incompetent. The "failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent . . . deprives him of his due process right to a fair trial." *Bishop v. Superior Court*, 150 Ariz. 404, 406, 724 P.2d 23, 25 (1986) [quoting from *Drope v. Missouri*, 420 U.S. 162, 172, 95 S.Ct. 896, 904, 43 L.Ed.2d 103 (1975)]. As the *Bishop* Court explained, the constitutional right to counsel entails a requirement that the defendant be able to assist counsel to rationally weigh the advantages and disadvantages of various actions in his case. "It is also necessary that the defendant have the mental ability to control the decision-making process. . . . Consequently, the law recognizes that a defendant cannot plead or be tried while incompetent." *Bishop v. Superior Court*, *id.* But it is vital to remember that competent defendants may make objectively unreasonable choices. "Competent choices are not to be equated with wise choices; competent defendants are allowed to make choices that may not objectively serve their best interests." *State v. Kayer*, 194 Ariz. 423, 434, ¶ 38, 984 P.2d 31, 42, (1999) *cert. denied* 120 S.Ct. 1259, 146 L.Ed.2d 115 (2000).

"The test for whether a competency hearing is mandated is not whether a defendant was insane at some time in the past, or even whether he was free of all mental illness at the time of the waiver. . . . Rather, it is whether, on the basis of the facts and circumstances known to the trial judge, there was or should have been a good faith doubt about the defendant's 'ability to understand the nature and consequences of the waiver, or to participate intelligently in the proceedings and to make a reasoned choice among the alternatives presented.'" *State v. Cornell*, 179 Ariz. 314, 322-3, 878

P.2d 1352, 1360-1 (1994), *quoting Harding v. Lewis*, 834 F.2d 853, 856 (9th Cir. 1987),  
*cert. denied*, 488 U.S. 871 (1988).